

Minutes of the Land Use, Parks and Environment Committee - July 13, 2004

Chair Kolb called the meeting to order at 8:50 a.m.

Present: Chair Walter Kolb, County Board Supervisors Kathleen Cummings, Pauline Jaske, Scott Klein, Bill Kramer, Daniel Pavelko, Vera Stroud. Supervisors Dan Pavelko and Kathleen Cummings arrived 8:54 a.m. Supervisor Cummings left the meeting at 10:55 a.m.

Staff Present: Legislative Policy Advisor Mark Mader, Office Services Coordinator Windy Jicha.

Also Present: Parks and Land Use Planning & Zoning Manager Dick Mace, Treasurer Pam Reeves, Solid Waste Supervisor Karen Fiedler, County Board Supervisor Rodell Singert, Michael Schlitz, Geoff Robinson, Joseph Cummings, Senior Planner Kathy Moore.

Approve Minutes of June 15, 2004

Motion: Kramer moved, Klein second, to approve the minutes of June 15, 2004. **Motion carried:** 6 – 0.

Executive Committee Report of July 12, 2004

Kolb reported that the Executive Committee discussed Resolution 159-R-003 at length. The resolution passed with a vote of four to three. The committee had a vigorous discussion on Ordinance 159-O-037 regarding the WCFLS capital costs reimbursement program. The committee discussed at length the resolution on the Pewaukee library consolidation. Members approved a scope change for a capital project for HHS computer automation. The committee approved two appointments.

Consider Proposed Ordinance: 159-O-026 Amend the District Zoning Map of the Town of Brookfield Zoning Ordinance by Rezoning Certain Lands Located in Part of the NE ¼ of Section 29, T7N, R20E, Town of Brookfield, from the RM-2 Multi-Family Residential District to the RM-2 Multi-Family Residential with Planned Unit Development (PUD) Overlay Districts (ZT-1443A)

Mace explained where the rezoning is located in Brookfield and gave a brief history of the property. The proposed land use for the parcel is RM-2 multi-family residential with planned unit development overlay districts. Municipal sewer and water serve this property. This property was the subject of a Land Use Plan amendment in 2003 where the County Board approved to reclassify the property from Commercial to Medium Density Residential. Approval of this ordinance is subject to a Waukesha County Stormwater Construction Site Erosion Control and Stormwater Management Ordinance review. Staff is recommending approval and feels that the Town of Brookfield and developer have provided a development that is compatible with the adjacent multi-family condominiums and the residential care center. They also feel the site will afford safe entrance onto Brookfield Road.

Motion: Kramer moved, Cummings second, to approve Ordinance 159-O-026. **Motion carried:** 7– 0.

Consider Proposed Ordinance: 159-O-027 Amend the Text of the Town of Mukwonago Zoning Ordinance to Create Section 2.02(69A) and Repeal and Recreate Section 14 as It Relates to the R-3 Zoning District (ZT-1533)

Mace said the staff feels this request should be approved and that the Town of Mukwonago should be commended for making this change. This provision will help the Town of Mukwonago deal with legal substandard lots of record in close proximity to certain bodies of water and vegetating the impact on water quality with vegetative buffers. Mace distributed a draft version of the Town of Mukwonago ordinance and discussed the sections to be recreated by this ordinance.

Kolb asked if the people affected by this ordinance were knowledgeable about it? How many people turned up for the public hearing? Mace said the residents are very well informed.

Klein questioned the fact that buildings around the lake cannot be more than two floors. Can someone build a two story house with an exposed basement here? Mace said they could not build such a house.

Stroud asked if the changes made on page seven were made for clarity? Mace said the originally wording suggested you could build half a foot from the flood plain. This change modifies the normal setback standard.

Klein said this new wording allows for building on a flood plain. Why did they strike the words on page seven? Mace said he didn't know but he could call staff that would. Klein thinks the lines on page seven should refer to letter C on page four. Mace said the information on page seven falls under special exceptions and does not refer to information on page four.

Stroud suggested that the committee send this back. Mace asked why? You don't understand what this is all about. This ordinance allows greater flexibility and sets new standards for the lots around the lakes. Information on pages six and seven is for special exceptions only.

Cummings said she would like Kathy Moore, the staff person who worked on this, to come to the committee to discuss the issue. It should be clear for the average person to read and it is not. It needs further clarification.

Kolb asked if the new designation of lot sizes on page five gives you more flexibility? Mace said it would require fewer appeals. Kolb is concerned that this will make substandard lots that cannot have houses built on them.

Klein said if you don't meet the standards, you go to special exemptions on page six which now says you can build on a lot that is on the floodplain. Mace said that is probably true. Klein said you don't want to allow that without the person coming in for an appeal. Mace said you have to come to the county if you are in the floodplain to have it rezoned for building. Klein said if you rezone it, you are in the floodplain.

Mader asked if the timing of this is not critical, could the committee table this ordinance and have Mace or Moore return to a future meeting to clarify these issues? The committee delayed further discussion on Ordinances 159-O-027 and 159-O-028 until Kathy Moore could come to the meeting to provide further insight.

Consider Proposed Ordinance: 159-O-029 Amend the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map of the Town of Waukesha by Rezoning Certain Lands Located in Part of the NE ¼ of Section 6, T6N, R19E, and Annexed by the City of Waukesha, Waukesha County, Wisconsin, from the A-2 Rural Home, R-1 Residential and C-1 Conservancy Districts to the R-3 Residential, EC Environmental Corridor and C-1 Conservancy Districts (SVZ-1539)

MOTION: Jaske moved, Cummings second, to put Ordinance 159-O-029 on the table. **Motion carried: 7-0.**

Mace explained where the rezoning is located and gave a brief history of the parcel. Only a portion of the property is subject to the rezone. The development plan keeps the proposed houses out of the primary

environmental corridor found along the creek. The development will provide common open space along the environmental corridor. The rezoning will change the lots sizes from the three-acre to the half-acre category and will provide some of the larger lots in the City of Waukesha. The development will be served by sanitary and sewer and water main. Staff recommends approval of this ordinance. The proposed subdivision complies with the County Land Use Plan and the proposed use is similar to the surrounding areas. The requested proposal complies with the intent of the Waukesha County Shoreland and Floodland Protection Ordinance.

Schlitz [the developer] said this property is deed restricted to meet the restrictions of the Secondary Environmental Corridor and preservation language was added to the final product. He has worked on several other properties in this area.

Cummings asked when would this be approved by the City of Waukesha planning committee. Schlitz said he anticipates approval in August.

MOTION: Pavelko moved, Kramer second, to approve Ordinance 159-O-029. **Motion carried:** 7-0

Consider Proposed Ordinance: 159-O-030 Amend the District Zoning Map of the Town of Waukesha Zoning Ordinance by Revising the Condition of a Previous Conditional Rezoning (Enrolled Ordinance No. 153-129), for Certain Lands Located in the SW ¼ of Section 10, T6N, R19E, Town of Waukesha (ZT-1237C)

Mace explained to the committee where the rezoning is located. He said this is a fairly cut and dried issue. Staff recommends approval of this rezoning. Traffic on Sunset Drive and Prairie Avenue is extremely high and is served by a five-lane undivided roadway. This property will be used for sit-down type or fast food restaurants with no drive-thru lanes. The exclusion of the restaurant facilities with drive-thru lanes will serve to decrease congestion and not adversely impact neighboring uses or unduly increase traffic congestion along Sunset Drive and Prairie Avenue.

Klein asked why fast food was prohibited at this site in the past? Mace said the petitioner didn't want it to be used for fast food in the past but is now finding that fast food restaurants without drive-thrus will work here.

Cummings said the City of Waukesha provided sewers to this property when it was built. The street doesn't need any more restaurants.

Klein asked Mace aren't you guessing why fast food restaurants were prohibited from this location in the past? Mace said when this issue was presented in the past, we thought it was prohibitive to have fast food restaurants on this site due to increased traffic. This is no longer an issue because there won't be any drive thrus.

Supervisor Klein left the meeting.

Cummings said she is not comfortable voting for this issue but she doesn't know why. It is just a feeling. She can always change her mind on the board floor.

Motion: Pavelko moved, Kramer second, to approve Ordinance 159-O-030. **Motion carried:** 5-1 (Cummings voted no).

Supervisor Klein returned to the meeting.

Consider Proposed Ordinance: 159-O-027 Amend the Text of the Town of Mukwonago Zoning Ordinance to Create Section 2.02(69A) and Repeal and Recreate Section 14 as It Relates to the R-3 Zoning District (ZT-1533)

Consider Proposed Ordinance: 159-O-028 Amend the Text of the Town of Mukwonago Zoning Ordinance to Repeal and Recreate Section 3.08(Q) 3. (f) of the Town of Mukwonago Zoning Ordinance as It Relates to Computation of C-1 Conservancy and A-E Exclusive Agricultural Conservancy Districts in the Planned Unit Development Calculation (ZT-1540)

Moore arrived at the meeting to clarify issues surrounding Ordinances 159-O-027 and 159-O-028. Moore said regarding 159-O-027, properties need to be above the flood plain. If someone comes in with a small lot, it won't be rezoned. Anyone who wants improvements to the lot needs to come in for rezoning. Most of these are R2 and some R1. This district will be for small lots adjacent to Phantom and Spring Lakes. The county ordinance has setbacks while the town ordinance does not. This will give people a miniature-building envelope with the Town's minimum structure size of 900 square foot first floor, 240 square foot garage and a second story. This is intended as a reasonable use of the property. They aren't rezoning floodplain. There is big concern that the county would not allow construction on these lots. If you want to build on an existing flood plain you need to flood proof everything including the septic, well, mechanics, etc. The Town is concerned the floodplain may change when the county redoes the flood plain boundaries. New construction is not allowed in the floodplain without special approval and rezoning. It is difficult to do.

Klein asked why are you striking words on page seven? Moore said the words were struck because it was considered a "given." You have to rezone this. Mace said we have already allowed building here. The town has a similar ordinance. There are properties subject to flooding in the 100-year flood plain. If you want to build in these plains, you have to flood proof the well, septic, mechanicals, etc.

Mader said if we leave the existing language, there are Board members who will have a different view. Who is prepared to explain that to the County Board? Few people will notice the change on page seven. Is there a way for Moore to do a cover memo explaining this to the County Board? Mace said if we left the language as is, a homeowner here would be unable to rebuild it. Moore said the town is concerned because there are many lots that are one to two feet above the flood plain. Klein said there's no reason to strike the line on page seven. Moore said because the floodplain elevation could change over time and they weren't sure where the new flood plain would be and someone could fill the floodplain.

Klein asked if you don't want people building in the floodplain, could we change the wording and send it back to the Town? Mader said we could make a motion with language stating approval of the ordinance is contingent upon the Town of Mukwonago making specific language changes on page seven.

MOTION: Klein moved, Stroud second, to approve Ordinance 159-O-027 contingent upon the Town of Mukwonago approving language changes on page seven of the town ordinance.

The committee discussed at length the language changes they wanted for page seven of the Town of Mukwonago ordinance. Moore said she would draft new language for this section according to the committee's directions and return later for committee review. Moore will take the changes to the Town of Mukwonago for their approval.

ON THE MOTION: Motion carried: 7-0.

Moore said regarding Ordinance 159-O-028, in the current plan there is language included on how to calculate the conservancy density formula that was written in the early 1980's. This became an issue when we started to calculate the density of the Rainbow Springs property. The formula was being interpreted many different ways and they felt it needed to be straightened out before it became an issue.

MOTION: Cummings moved, Jaske second, to approve Ordinance 159-O-028.

Kolb said this looks like it could really make people angry. Moore said this provision will clarify the calculation of how much of the C-1 Conservancy and A-E Agricultural Conservancy lands is used in the calculation of the overall density in a Planned Unit Development. Because of the position the County Board has taken in using all of the conservancy lands in the overall density of the community to determine the compliance with the County Development Plan, the proposal is more restrictive than the densities used in the County Development Plan.

ON THE MOTION: Motion carried: 7-0.

Consider Proposed Resolution: 159-R-005 Support State and Federal Legislation for Extended Producer Responsibility of Consumer Electronics

Motion: Kramer moved, Jaske second, to approve Resolution 159-R-005.

Fiedler explained the necessity of properly disposing of computers. The resolution supports legislation to establish an infrastructure and funding for recycling computers, televisions and certain consumer electronics, encourage cooperation between producers, retail stores, recyclers, municipalities, non-profit organizations, and the Wisconsin Department of Corrections, and provide for public education on proper disposal of electronics. The Solid Waste Management Board is in support of this resolution. This resolution was amended and approved by the Executive Committee on July 12, 2004.

Supervisor Cummings left the meeting at 10:55 a.m.

Klein asked who is funding this, the government, the people, etc.? Fiedler said there is no funding at this point, it is just a resolution. The Executive Committee amended the resolution because they thought it was too detailed. Klein said as it reads now, this resolution will need funding to create the program. He is going to vote against it because of the funding issue.

Stroud said if manufacturers have to pay for the disposal of computers, the costs would be filtered to consumers.

Mader said the wording in this resolution states that Waukesha County is aware of this problem existing and will support legislation aimed at solving the problem. The resolution doesn't state who will pay for the solution.

Klein and Pavelko agreed that the resolution says that a program should be developed and funding found to solve the problem.

Klein asked Kolb, if you leave this up to the legislators and they raise taxes for the program, would you support this? Kolb said he would support it with a wince. He thinks that consumers of these products

should pay for disposal and the legislature should not be involved. Klein said he can't support this because it says we are backing whatever the legislators decide to do. It is a meaningless resolution.

Stroud said this type of garbage is the quickest growing. The toxic products found in computers will spoil landfills. Fiedler said this problem is going to get worse as the turnover of computers continues to increase. Stroud said manufacturers should produce computers with swap out components so less garbage goes into landfills.

ON THE MOTION: Motion defeated: 0-6.

Consider Proposed Ordinance: 159-O-039 Abolish County Solid Waste Management Board

Jaske said taking out the resolved phrase of Resolution 159-R-005 takes away what the Solid Waste Management Board had intended for that resolution.

Motion: Kramer moved, Pavelko second, to approve Ordinance 159-O-039. **Motion carried:** 6- 0.

Consider Proposed Ordinance: 159-O-027 Amend the Text of the Town of Mukwonago Zoning Ordinance to Create Section 2.02(69A) and Repeal and Recreate Section 14 as It Relates to the R-3 Zoning District (ZT-1533)

Moore returned to the meeting to read to the committee the language she drafted for the amendment on page seven of the Town of Mukwonago ordinance. The wording is as follows: "The proposed construction must be outside of the 100-year floodplain unless the property is zoned EFD (Existing Floodplain Development District) and the first floor must be at least (2) two feet above the 100-year floodplain. The committee members agreed that the language was appropriate and should be taken to the Town of Mukwonago for approval.

Consider Proposed Ordinance: 159-O-031 Approve Assignment Contract for Brownfield Property Barrett Landfill, New Berlin

Reeves said this ordinance authorizes a contract between the county and King Development, LLC whereby the county assigns its foreclosure judgment on a tax delinquent property to King Development. The property has been tax delinquent for more than ten years and is the site of a landfill in New Berlin. By assigning the foreclosure judgment, the county is able to get the property (with a 2003 assessed value of \$54,300) back on the tax rolls while keeping out of the chain of title and avoiding the liabilities associated with owning Brownfield property. Under the terms of the contract, King Development will pay the county \$36,416 in delinquent taxes plus \$1,000 to offset county costs related to the foreclosure. King would take ownership of the property "as is" and would have no future recourse to the county for any environmental cleanup costs. It is King's intention to build storage units on this site. The units will be built on a retention pond located on the property not the actual landfill. The purchaser believes it will take approximately three years to fill the pond for construction. This property has fallen under the jurisdiction of the DNR. Michael Frede, a principal developer with King Development, told Reeves that the DNR has not monitored this sight in more than ten years and it has not been pumped for more than three years.

Klein asked, has it been determined that the water retention pond is not needed? Reeves said the pond was necessary on the property before it was a landfill. The developer won't be able to get a permit to build the units until the pond is filled. The developer is doing this at a huge expense. It will cost more than \$100,000 over three years to prepare this property for building. King is also paying the county the past taxes. The county will transfer ownership of this property without having to put the county's name on the title. This is a one-time shot to get rid of this property.

Motion: Kramer moved, Pavelko second, to approve Ordinance 159-O-031. **Motion carried:** 6–0.

Motion to adjourn: Kramer moved, Stroud second, to adjourn the meeting at 11:24 a.m. **Motion carried:** 6–0.

Respectfully submitted,

Pauline T. Jaske
Secretary